

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

ARGELIO TORRES-LOPEZ)	
)	
v.)	NO. 1:06-CV-43
)	(CR. 1:03-CR-163)
UNITED STATES OF AMERICA)	Judge Curtis L. Collier

MEMORANDUM OPINION

Argelio Torres-Lopez (“Petitioner”), a federal inmate, brings this *pro se* motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, challenging the constitutionality of his confinement under a judgment entered by this Court on December 22, 2004 [Court File No. 125 in the criminal case]. Pursuant to his plea of guilty, Petitioner was convicted of one count of carrying a firearm during and in relation to a drug-trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A)(i), and one count of conspiring to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A). He subsequently was sentenced to 185 months of imprisonment (125 months on the drug offense and a consecutive 60 months on the firearms charge) and to two, concurrent, five-year terms of supervised release. He then filed a direct appeal, which he indicates is still pending. For the reasons which follow, the United States will not be required to answer this motion and it will be **DISMISSED** without prejudice.

The record reflects on February 3, 2006— two days after this instant motion was signed and three days before this case was filed in the Court’s electronic case filing system— the United States Court of Appeals for the Sixth Circuit, pursuant to a joint motion by Petitioner and the government, decided Petitioner’s appeal by vacating the judgment under attack in this § 2255 petition and

remanding the case for resentencing under the authority of *United States v. Booker*, 540 U.S. 220 (2005) [Court File No. 136 in the criminal case].

Since the judgment of sentence has been vacated and Petitioner has not been resentenced, there is no sentence to vacate, set aside, or correct. Therefore, this motion is premature and will be **DISMISSED WITHOUT PREJUDICE**. The Court expresses no opinion as to grounds raised in the motion which, according to Petitioner, were not offered in his direct appeal.

A separate Order will enter.

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE